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11 Attorneys for Defendant QBE SPECIALTY INSURANCE COMPANY

12 UNITED STATES DISTRICT COURT

13 DISTRICT OF NEVADA

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16 B.H. OF NEVADA, INC. d/b/a BLUE
HAVEN POOLS, a Nevada corporation,

17 Plaintiff,

18 vs.

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20 QBE SPECIALTY INSURANCE
COMPANY; a North Dakota corporation;
21 DOES 1 through X, and ROE
22 CORPORATIONS 1 through X, inclusive,

23 Defendants.

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25 CASE NO. 2:19-CV-194

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28 **NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441(b)
DIVERSITY**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant QBE Special Insurance Company ("QBE")

1 hereby removes to this court the state court action described below, pursuant to the provisions
2 of 28 U.S.C. § 1446, on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1441(b) as
3 follows:

4 1. On or about December 20, 2018, Plaintiff B.H. of Nevada, Inc., dba Blue Haven
5 Pools (“Blue Haven Pools”), electronically filed an action in the Eighth Judicial District Court,
6 Clark County, Nevada, titled *B.H. of Nevada, Inc., d/b/a Blue Haven Pools v. QBE Specialty*
7 *Insurance Company, DOES I through X, and Roe Corporations I through X, inclusive*, Case
8 No. A-18-786389-C. A copy of the Complaint is attached as Exhibit “A”.

9 2. The Complaint alleges that Defendant QBE failed to defend and indemnify
10 Plaintiff Blue Haven Pools against a construction defect action that was filed by non-party
11 Arthur Birzenck on or about November 30, 2011. Complaint, ¶¶ 9, 12, 15. The Complaint
12 alleges causes of action for breach of an insurance contract, breach of the covenant of good
13 faith and fair dealing, violations of Nevada Revised Statute 686A.310, and declaratory
14 judgment.

15 3. The first date upon which Defendant QBE received a copy of the said Complaint
16 and the Summons was on January 8, 2019 when Defendant QBE was served by mail via CT
17 Corporation System. The service included a copy of said Complaint, a Nevada Department of
18 Business and Industry, Division of Insurance letter, dated January 3, 2019, and a copy of the
19 Summons from the State Court. A copy of the Service of Process and the January 3, 2019 letter
20 from the Nevada Department of Business and Industry, Division of Insurance is attached as
21 Exhibit “B”. The Summons issued in the State Court is attached as Exhibit “C”.

22 4. This lawsuit is a civil action of which this Court has original jurisdiction under 28
23 U.S.C. § 1332 and is one which may be removed to this Court by Defendants pursuant to the
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provisions of 28 U.S.C. § 1441(b), in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs, because Plaintiff Blue Haven Pools is seeking at least \$102,500 from Defendant QBE, which is the amount Blue Haven Pools allegedly paid for the settlement of a construction defect lawsuit filed by Arthur Birzneck. Complaint ¶¶ 9, 14.

5. Complete diversity of citizenship exists in that Plaintiff Blue Haven Pools is a Nevada corporation. Complaint ¶ 1. The Complaint incorrectly alleged that QBE was a Wisconsin corporation. Complaint ¶ 2. Defendant QBE is a North Dakota corporation. Therefore, there is complete diversity. Defendant QBE is the only Defendant in this matter, and, therefore, is the only Defendant who has been served with a Summons and the Complaint.

6. The Complaint also names Does 1 through X and Roe Corporations. Under 28 U.S.C. § 1441(b), removal based on diversity of citizenship under section 1332(a), the citizenship of defendants sued under fictitious names shall be disregarded.

7. A substantial part of the events or omissions giving rise to the *B.H. of Nevada, Inc., d/b/a Blue Haven Pools v. QBE Specialty Insurance Company, et al.* action occurred in Clark County, Nevada. Thus, the instant action may be assigned to this court sitting in the U.S. District Court of Nevada.

8. Written notice of the filing of this Notice will be given to all adverse parties as required by law.

9. A true and correct copy of this Notice will be filed with the Eighth Judicial District Court, Clark County, Nevada as required by law.

25 WHEREFORE, Defendant QBE requests that the Court remove this action from aforesaid
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1 State Court, in which it is now pending, to the United States District Court for the District of
2 Nevada.

3 DATED: February 1, 2019

4 By: /s/ George D. Yaron

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